

Encumbrance #: 10A-20090715-%-0315
DHHS Agreement #: OMS-10-200
Vendor/Customer #: VC0000106326

**STATE OF MAINE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
American Recovery and Reinvestment Act (ARRA)
Agreement to Purchase Services**

THIS AGREEMENT, made this 1st day of July, 2009, is by and between the State of Maine, Department of Health and Human Services, hereinafter called "Department," and HealthInfoNet mailing address PO Box 360, Manchester, ME 04351-0360, physical address, 245 Commercial St. Suite 201 Portland, ME 04101 hereinafter called "Provider", for the period of 07/01/2009 to 6/30/2010.

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement.

The following Riders and Attachments are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B - Payment and Other Provisions
- Rider C - Rider B Exceptions
- Rider D - Additional Requirements
- Rider G - Identification of Country In Which Contracted Work Will Be Performed

WITNESSETH, that this contract is consistent with Executive Order 17 FY 08/09 or a superseding Executive Order, and complies with its requirements.

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in one original copy.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

By: _____

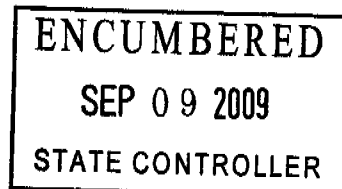
Russell J. Begin, Deputy Commissioner for Finance

And

HEALTHINFONET

By: _____

Devore Culver, Executive Director



Total Agreement Amount: \$1,700,000.00

Approved: _____

Chair, State Purchases Review Committee

Betty M. Lamoreau SEP 09 2009

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STATE OF MAINE
DIVISION OF PURCHASE



STATE OF MAINE
STANDARD AGREEMENT COVER PAGE
DEPARTMENT OF HEALTH AND HUMAN SERVICES

DHHS Agreement #OMS-10-200
AdvantageME CT #10A-20090715-%-0315

Community Agency Name: HealthInfoNet

Address: PO Box 360 , Manchester, Maine 04351-0360

Program Name: _____

Service: Electronic Information Sharing

Geographic Area Served: Statewide

DHHS District #8

DHHS Region #3

Vendor/Customer #: VC000010626

Agency Fiscal Year: 7/1 to 6/30

FOR DEPARTMENT USE ONLY

Agreement Period

Effective Date: 7/1/2009

Termination Date: 06/30/2010

Amended Effective Date: _____

Amended Termination Date: _____

Type of Agreement

☒ Contract-State Services

☐ Grant- Client Services

☒ New

☐ Renewal

☐ Amendment

☐ Budget Revision

CFDA #	ACCOUNT #	FY 2010 Encumbrance	FY 2011 Encumbrance	Agreement Total
1.	010-10A-012901-3061-4095	\$1,000,000.00	\$0.00	\$1,000,000.00
2.	020-10A-021901-3061-4095	\$700,000.00	\$0.00	\$700,000.00
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
TOTALS		\$1,700,000.00	\$0.00	\$1,700,000.00

Agreement Routing:

Agreement Administrator

Tom Collins

Purchased Services Manager

Rob Jones

AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING MATRIX

A. STATE GENERAL FUNDS \$1,000,000.00

B. FEDERAL FUNDS \$ _____

C. FEDERAL ARRA STIMULUS FUNDS \$ 700,000.00

E. OTHER FUNDS \$ _____

AGREEMENT TOTAL

\$1,700,000.00

**STATE OF MAINE
DEPARTMENT OF HEALTH & HUMAN SERVICES**

PROVIDER SUMMARY PAGE

Community Agency/Program Name:	HealthInfoNet	
TTY:		
Executive Director:	Devore Culver	
Telephone #:	207-430-0676	Fax #:
Address:	P.O. Box 360	Manchester, ME 04351-0360
E-mail address:	dculver@infonet.org	
Agreement Contact Person:	Devore	
Telephone #:	207-430-0676	Fax #:
Address:	See Exec. Director	
E-mail address:	See above/below	
Fiscal Contact Person:		
Telephone #:		Fax #:
Address:		
E-mail address:		
Clinical Director:		
Telephone #:		Fax #:
Address:		
E-mail address:		
IT Services Contact:		
Telephone #:		Fax #:
Address:		
E-mail address:		

Other Contact Information:

List all locations where client services are provided and include the contact person, telephone number, and hours of service.

Service	Service Site	Contact Person	Telephone #	Hours of Service	License Type and Capacity

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

The Provider has been engaged in a demonstration project to develop a secure system to share patient information among hospitals and other healthcare providers. The participating organizations have been connected via a secure virtual private network to test the sharing of these data. This contract provides funding to complete this work, transitioning from the demonstration to the operational phase.

The Provider agrees to complete the implementation of the demonstration phase to provide the participating authorized health care professionals and treatment centers immediate and secure access to a patient's health records. The Provider agrees to allow the exchange to fully leverage public and private funds in order to achieve operational self-sufficiency. The system will include rigorous protections to ensure the highest level of patient privacy and overall security.


Intensive work is now underway to move the demonstration phase into a 'go live' mode by the end of summer 2009. The "go live" operation within the demonstration phase will be completed by May 2010. Funding for the completion of the demonstration phase implementation and the "go live" operation has been appropriated by the legislature in Fiscal Year 2010 for a total sum of \$1,700,000.

The completion of the Demonstration Phase will focus on:

- Automation of the reporting of laboratory testing that is positive to Maine CDC for 30 of the diseases mandated by state law.
- Finalization of the live interfaces with all six participating provider organizations providing patient registration data for the statewide master patient index.
- Finalization of the radiology test results interfaces for all six provider organizations.
- Finalization of the laboratory results interfaces for all six provider organizations.
- Finalization of interfaces that will provide clinical data for allergies, problem lists, other transcribed diagnostic and procedure reports, visit history and summary of diagnosis and procedures.
- Completion of prescription medication history profile reporting for access by participating providers.
- Finalization of all security and confidentiality procedures including protection of restricted information.
- Go live clinical use of the statewide health information exchange with all interfaces operational.
- Finalize opt out option available to all patients in a user friendly mode.

This system shall comply with the requirements of the U.S. Department of Health and Human Services extensive national endeavor aimed at protecting patient privacy for which Maine has been selected to participate.

~~Reporting: The Provider is required to submit a project report at 6 months and at the end of the Demonstration Phase detailing expenditures and a description of work performed with progress towards goals and outcomes.~~


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RIDER B
METHOD OF PAYMENT AND OTHER PROVISIONS
AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

1. **AGREEMENT AMOUNT:** **\$ 1,700,000.00**

2. **INVOICES AND PAYMENT.** The Department will pay the upon receipt of an approved invoice. These payments will be based upon the following payment schedule:

July – September 2009: \$1,220,504
3M payments: \$964,404 (\$633,651 + \$110,251 X 3)
VPN/Security payments: \$4,800 (\$2,400 + \$800 X 3)
DrFirst Payment: \$251,300

October – December 2009: \$436,653
3M payments: \$330,753
VPN/Security: \$2,400
DrFirst: \$103,500

January – June 2010: \$42,843
Partial 3M payment: \$38,043


VPN/Security: \$4,800

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.


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6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name and Title: Thomas Collins
Address: 11 SHS, 221 State Street Augusta, ME 04330
Telephone: (207)287-8619
E-mail Address: Thomas.Collins@maine.gov

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

The following is designated as the Program Administrator for this Agreement and shall be responsible for oversight of the programmatic aspects of this Agreement.

Name and Title: Tony Marple, Director Maine Care Services
Address: 11 SHS, 442 Civic Center Drive Augusta ME
Telephone: (207)287-2093
E-mail Address: tony.marple@maine.gov


7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUBCONTRACTING AND ASSIGNMENT**. The Provider shall not assign or otherwise transfer or dispose of its right, title and interest in this Agreement without the express written consent of the Department. The Provider shall not subcontract, or make a sub-grant for, all or any portion of the work to be performed under this Agreement without the express written consent of the Department. The consent of the Department to any assignment or subcontract or sub-grant shall not relieve the Provider of its responsibility for performance of the work. The Provider shall include in any subcontract or sub-grant the terms of this Agreement set forth in Sections 1 to 36.

9. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of


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pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, and Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

h. The Provider shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and other civil rights laws applicable to providers of Federal financial assistance.

10. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this



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Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise there from directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise there from directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

13. **RECORD RETENTION AND INSPECTION.** The Provider shall retain during the term of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies ("MAAP") rules all records, in whatever form, that directly pertain to, and involve the work to be performed under this Agreement. The Provider shall permit the Department or any authorized representative of the State of Maine, and the United State Controller General or his representative or

the appropriate inspector general appointed under Section 3or 8G of the Inspector General Act of 1998 or his representative (a) to examine such records; and (b) to interview any officer or employee of the Provider or any of its subcontractors or sub-grantees regarding the work performed under this Agreement. The Provider shall furnish copies of such records upon request. The Provider shall include in any subcontract or sub-grant the provisions of this Section 14.

14. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

15. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

16. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State



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regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.


17. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

18. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

19. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

20. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

21. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.



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22. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

23. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

24. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

25. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

26. **WHISTLEBLOWER PROTECTIONS**

a. Section 1553 of Title XV of Division A of the ARRA prohibits all non-federal providers of American Recovery and Reinvestment Act (ARRA) funds, including the State of Maine, and all contractors and grantees of the State of Maine, from discharging, demoting or otherwise discriminating against an employee for

disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority

related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. The Provider must post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

b. This term must be included in all subcontracts or sub-grants involving the use of funds made available under the ARRA.

The State of Maine is committed to ensuring that American Recovery and Reinvestment Act funds are used for authorized purposes without fraud, waste, error, or abuse. Any individual with direct knowledge that Recovery Funds are being misused, whether by fraud, waste, error, and/or abuse in the application and utilization of these



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funds, should report their observations to the ARRA Fraud Hotline at **1-866-224-3033** or by email to **ARRA.Hotline@Maine.gov**.

27. **WAGE REQUIREMENTS** All laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. (See ARRA Sec. 1606). The Secretary of Labor's determination regarding the prevailing wages applicable in Maine is available at <http://www.gpo.gov/davisbacon/me.html>.

28. **REPORTING REQUIREMENT** Not later than ten calendar days after the end of each calendar quarter, the State must submit a report that, at a minimum, contains the information specified in Section 1512 of Division A, Title XV of the ARRA. It is imperative all contracts involving the use of ARRA funds include requirements that the Provider supply the State with the necessary information to submit these reports to the federal government in a timely manner. ~~The Provider shall report no less than quarterly.~~ Additionally the ~~Provider should be prepared to report more frequently at the State's request.~~ The Provider's failure to provide complete, accurate and timely reports shall constitute an "Event of Default". Upon the occurrence of an Event of Default, the state department or agency may terminate this contract upon 30 days prior written notice if the default remains uncured within five calendar days following the last day of the calendar quarter, in addition to any other remedy available to the state department or agency in law or equity.

29. **AVAILABILITY OF FUNDING** The Provider acknowledges that the programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 will not be continued with state financed appropriations once the temporary federal funds are expended.


30. **FALSE CLAIMS ACT** The Provider shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

31. **CONFLICTING REQUIREMENTS** If the ARRA requirements conflict with State of Maine requirements, then ARRA requirements control.

32. **COMPETITIVE FIXED PRICE CONTRACTS** The Provider, to the maximum extent possible, shall award any subcontracts funded, in whole or in part, with Recovery Act funds as fixed-price contracts through the use of competitive procedures.

33. **SEGREGATION OF FUNDS** The Provider shall segregate obligations and expenditures of Recover Act funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.

34. **JOB POSTING** The Provider will post any jobs that it creates or seeks to fill as a result of this agreement. Providers will post to Maine Career Centers (<http://www.mainecareercenter.com>) notwithstanding any other posting they might make. Any advertisements posted by the provider for positions pursuant to this contract must indicate the position is funded with ARRA funds.


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35. **BUY AMERICAN REQUIREMENT** – The provider acknowledges and agrees that:

- a. The Buy American provision in Section 1605 of Division A, Title XVI of the ARRA requires that all “iron, steel and manufactured goods used in the construction, alteration, maintenance or repair of a “public building or public work funded in whole or in part by funds made available under the ARRA be “produced in the United States,” unless this requirement is waived by the appropriate federal agency.
- b. Iron and steel are “produced in the United States” if all of the manufacturing processes, except metallurgic processes involving refinement of steel additives, take place in the United States. Iron or steel used as components or subcomponents of manufactured goods used in an ARRA-funded project; however, do not have to be “produced in the United States.” Manufactured goods are “produced in the United States” if the manufacturing occurs in the United States (there is no requirement about the origin of the components or subcomponents of the manufactured goods).
- c. The Buy American requirement may be waived by federal agencies in the following circumstances only: (1) application of the Buy American requirement would be inconsistent with the public interest: (2) iron, steel and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality: (3) or inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.
- d. As used in this Section, “steel” means any alloy that includes at least 50 percent iron, between .02 and 2 percent carbons, and may include other elements. “Manufactured good” means a good brought to the construction site for incorporation into the building or work that has been – (1) processed into a specific form and shape; or (2) combined with other raw material that has different properties than the properties of individual raw materials. “Public building or public work” means a public building of, and a public work of, the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State regional or interstate entities which have governmental functions).

36. **RECOVERY ACT LOGO** The Provider is receiving funding under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Any product or service resulting from this award shall display the Recovery Act Logo in a manner that informs the public that the project is a Recovery Act investment. The ARRA logo may be obtained at the following website:
<http://www.recovery.gov/?q=content/president-and-vice-president-unveil-new-recovery-emblem-download-available>

{ANY ADDITIONAL DEPARTMENT LOGO SPECIFICATIONS MAY BE PLACED IN THIS SECTION }

37. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or



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more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

A handwritten signature in black ink, appearing to be a stylized 'R' or 'B' followed by a flourish.

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RIDER C
EXCEPTIONS TO RIDER B


9-19-09

RIDER D


Not Required: For use at Department's Discretion

A handwritten signature, possibly reading "S. 19.08", written in dark ink.

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RIDER E

Not Required: For use at Department's Discretion


8.19.09

RIDER F

Not Required: For use at Department's Discretion


8-19-09

RIDER G
IDENTIFICATION OF COUNTRY
IN WHICH CONTRACTED WORK WILL BE PERFORMED

Please identify the country in which the services purchased through this contract will be performed:



United States. Please identify state: _____



Other. Please identify country: _____

Notification of Changes to the Information

The Provider agrees to notify the Division of Purchases of any changes to the information provided above.



8-18-09